In the Matter of

Modernizing the E-rate
Program for Schools and Libraries

WC Docket No. 13-184

REPLY COMMENTS OF THE AMERICAN CABLE ASSOCIATION
ON THE NOTICE OF PROPOSED RULEMAKING

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November 8, 2013

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SUMMARY

In response to the Commission's Notice of Proposed Rulemaking ("NPRM") to

modernize the E-rate program, there was an outpouring of comments. While many commenters

provided extensive detail about aspects of an updated E-rate program, there was little consensus

with one exception: virtually all agreed that schools and libraries require some degree of high-

capacity broadband connectivity all the way to the student or library patron. This lack of

agreement on most issues is not surprising given the intense interest in the program from so

many disparate quarters and the open-ended nature of much of the NPRM. Accordingly, one

prominent E-rate program participant, the State E-Rate Coordinators' Alliance ("SECA"),

encouraged the Commission to issue more "concrete proposals…with specific rule changes in

order to allow parties to submit comments on the cohesive reform approach."

For its part, the American Cable Association ("ACA"), echoing statements of

Chairwoman Clyburn, noted that the Commission lacks sufficient data upon which to formulate

sound policies to modernize E-rate. Neither the NPRM nor any commenter provided sufficiently

precise information about the nature and size of the problems we face in bringing high-speed

broadband connectivity to all schools and libraries. ACA submits that the Commission cannot

formulate new rules without first collecting these facts about supply (broadband infrastructure)

and demand (broadband dependent applications and services).

That said, there is a path forward. In these comments, ACA sets forth a process the

Commission should undertake to reform the program, beginning by defining the new broadband

connectivity mission and collecting data to define the nature and scope of the effort required to

achieve this goal. Once this is accomplished, ACA proposes the Commission should adopt the

following measures to make the program more cost-effective and ensure it is fiscally responsible:

- Require schools and libraries to use existing facilities of service providers to the maximum extent before constructing their own facilities.

- Simplify and amend the application process to facilitate and encourage service provider participation.

- Phase-out non-broadband related services from the Eligible Services List.

- Increase matching funds requirements, particularly in non-rural areas that have lower costs for providing service.

Finally, the program should maintain the current E-rate program budget.

TABLE OF CONTENTS

In the Matter of

Modernizing the E-rate   WC Docket No. 13-184
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The American Cable Association ("ACA") respectfully submits reply comments in

response to the Notice of Proposed Rulemaking ("NPRM") to modernize the E-rate program for

schools and libraries.[1] ACA's more than 800 small and mid-size cable operator members (often

operating in more rural areas) have a substantial interest in this proceeding as: current or

potential broadband and telecommunications services providers to schools and libraries

participating in the E-rate program; services providers that do not want the government to

support overbuilding of their networks; and contributors to the Universal Service Fund ("USF").

ACA supports many of the proposals in the NPRM and believes its members can contribute

significantly to ensuring schools and libraries have affordable access to communications services

required for digital learning.

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[1]   *See Modernizing the E-rate Program for Schools and Libraries,* WC Docket No. 13-184,
Notice of Proposed Rulemaking, FCC 13-100 (rel. July 23, 2103).

I. INTRODUCTION: CHARTING A PATH TOWARD E-RATE MODERNIZATION

In its NPRM, the Commission initiated an ambitious and wide-ranging review of the E-rate program. In more than 300 paragraphs, it asked a great many questions about how to provide schools and libraries with high-capacity broadband connections to use to improve educational experiences. In response, there was an outpouring of comments – approximately 800, many of which were quite lengthy and provided extensive detail about aspects of an updated E-rate program. At the same time, there was little consensus among the commenters with one exception: virtually all agreed that schools and libraries require some degree of high-capacity broadband connectivity all the way to the student or library patron. This lack of agreement on most issues is not surprising given the intense interest in the program from so many disparate quarters and the open-ended nature of much of the NPRM. As one prominent E-rate program participant, the State E-Rate Coordinators' Alliance ("SECA"), commented, the "breadth of the NPRM…makes it equally challenging…to understand the proposed blueprint for updating E-rate and how the hundreds of proposals may intersect and be aligned and to obtain a full picture of what E-rate 2.0 may look like."[2] Consequently, SECA encouraged the Commission to issue more "concrete proposals…with specific rules changes in order to allow parties to submit comments on the cohesive reform approach."[3]

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[2]   Initial Comments of the State E-rate Coordinators' Alliance, WC Docket No. 13-184, at 4 (Sept. 16, 2013) ("SECA Comments").

[3]   *Id.*

For its part, ACA, echoing statements of Chairwoman Clyburn,[4] discussed another aspect of the barriers the Commission faces in moving forward to adopt new rules – the lack of data upon which to formulate sound policies to modernize E-rate.[5] Despite its length and numerous proposals, the NPRM did not contain sufficiently precise information about the nature and size of the problems we face in bringing high-speed broadband connectivity to all schools and libraries. ACA submits that even after the initial comments, this conclusion still holds and that the Commission cannot formulate new rules without first collecting the facts about supply (broadband infrastructure) and demand (broadband dependent applications and services) to define the task we confront.

That said, there is a path forward, and, in these reply comments, ACA discusses concrete actions the Commission can take that will lead to a modernized E-rate program – one that achieves the objective of providing high-speed broadband connectivity to schools and libraries throughout the country, and would not unnecessarily delay needed reform. More specifically, ACA's comments set forth a process the Commission should undertake to reform the program, which begins by defining the new broadband connectivity mission and collecting data about the nature and scope of the effort required to achieve this goal. ACA then discusses substantive measures the Commission should adopt to make the program more cost-effective and fiscally responsible, including to --

- Require schools and libraries to use existing facilities of service providers to the maximum extent before constructing their own facilities;

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[4]   *See* "Connected in the Digital Age: Improving American Education Through Technology," Prepared Remarks of Acting Chairwoman Mignon L. Clyburn, Hosted by the Annenberg Retreat at Sunnylands, at 2 (Sept. 10, 2013) ("Chairwoman Remarks").

[5]   *See* Comments of the American Cable Association, WC Docket No. 13-184 at ii (Sept. 16, 2103) ("ACA Comments").

- Simplify and amend the application process to facilitate and encourage service provider participation;

- Phase-out non-broadband related services from the Eligible Services List ("ESL");

- Increase matching funds requirements, particularly non-rural areas that have lower costs for providing service.

Finally, ACA believes that the Commission should maintain the current E-rate program budget cap.

II.   THE CORE OF E-RATE 2.0: DEMAND FOR HIGH-CAPACITY BROADBAND CONNECTIVITY TO SUPPORT DIGITAL LEARNING

Virtually all commenters agreed with the Commission that the provision of high-capacity broadband connectivity to schools and libraries is "crucial for learning and for the operation of modern schools and libraries."[6] Further, commenters generally supported re-orienting the E-rate program's mission to ensure the provision of high-capacity broadband connectivity to students in the classroom and patrons in libraries – by having in place fully capable middle-mile, wide area

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[6]   NPRM, ¶ 1. *See* Education Coalition Comments, WC Docket No. 13-184 at 8 (Sept. 16, 2103) (broadband access "allows students to unlock the ability to deploy digital learning technologies and approaches."). *See also* Comments of Cisco Systems, Inc., WC Docket No. 13-184 at 4-5 (Sept. 16, 2013) ("Cisco Comments") (Cisco provided a series of case studies "that highlight how the adoption of technology can improve educational outcomes, promote collaboration in schools and districts, reduce expenses, and improve safety and security at school facilities."); Comments of the Schools, Health & Libraries Broadband Coalition, WC Docket No. 13-184 at 2 (Sept. 16, 2013) ("SHLB Comments") ("Education, access to information, and other community services are increasingly moving to 'the cloud.'); Comments of Comcast Corporation, WC Docket No. 13-184 at 1 (Sept. 16, 2013) ("Comcast Comments") ("Among other uses, high-speed broadband access can enrich curriculum and enhance the learning process by permitting students to use digital textbooks, work on multimedia projects, stream educational video content, conduct Internet-based research, take online courses that are not locally available, and interact with content experts.").

network ("WAN"), last mile, and in-building/on campus infrastructure.[7] There also was

substantial support for the Commission to effectively define the broadband capabilities that

schools and libraries require by establishing bandwidth targets, which then can be used as a

metric to gauge whether high-capability broadband service is being provided. [8] ACA concurs

with these commenters, and, it discusses below a process that the Commission should undertake

to gather data to establish the bandwidth targets.[9]

In addition to setting aspirational goals – which may, as discussed below, vary depending

on such factors as location and affordability – ACA submits that the Commission should

establish minimum requirements for broadband performance, as it did with the Connect America

Fund.[10] Federal support should be tightly linked to the provision of services that achieve federal

purposes, and the program should not award funding where its aims are not being met. This also

means the Commission will not only need to set forth thresholds for broadband performance and

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[7] EducationSuperHighway, for instance, called on the Commission to "focus the E-rate Program on broadband connectivity and infrastructure to ensure that we maximize the impact of E-rate on learning," and Comcast submitted that the E-rate program should support "whole network" broadband solutions. Comments of EducationSuperhighway, WC Docket No. 13-184 at ii (Sept. 16, 2013) ("ESH Comments") and Comcast Comments at 5.

[8] *See* Comcast Comments at 16 (the "process requires an in-depth understanding of broadband targets (e.g., bandwidth capacity and latency) that a high-speed service must meet to enable students to take advantage of digital learning tools."); *See also* Comments of Verizon and Verizon Wireless, WC Docket No. 13-184 at 9 (Sept. 16, 2013) ("Verizon Comments") (the Commission could use bandwidth targets as a "diagnostic tool to help determine where more help may be needed and focus solutions accordingly.").

[9] ACA agrees with those commenters that stress the importance of ensuring that any performance objectives are technology neutral. *See e.g*., Comments of the American Library Association, WC Docket No. 13-184 at 4 (Sept. 16, 2013) ("ALA Comments").

[10] *See Connect America Fund, et al.,* WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC RCD 17663, Section VI., ¶¶ 86-108 (2011) ("*USF/ICC Transformation Order/FNPRM*"). The National Broadband Plan recommended (11.15) the Commission establish "minimum service goals." *Connecting America: The National Broadband Plan* at 236 (2010) ("*NBP*").

adopt metrics but develop and implement data collection tools and conduct rigorous, transparent

analysis. As discussed in its comments, ACA supports using the Commission's Form 471 to

serve this function.[11]

How then should the Commission determine both the aspirational and minimal

performance capabilities? Schools and libraries generally favored specific, uniform nationwide

targets, such as those supplied by ConnectED or the State Education Technology Directors

Association ("SETDA").[12] EdLinc stated that "these goals represent excellent national

benchmarks that the vast majority of schools and libraries can and should embrace as aspirational

goals," and it asked "the Commission to establish scalable bandwidth targets that reflect the

individual circumstances of every school and district."[13] Cisco too supported "the concept of

per-school and per-student bandwidth target goals," and it proposed an "ideal target" of 1 Mbps

per student for 2014 and 4 Mbps per student in 2018.[14]

The National Cable & Telecommunications Association ("NCTA") and the NTCA—The

Rural Broadband Association ("NTCA") took a somewhat different position, reflecting a more

immediate, real-world view of the problem. NCTA stressed that any thresholds should be "based

on more definitive information regarding classroom needs in real world scenarios and the cost of

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[11]   *See* ACA Comments at 7. The *NBP* recommended (11.20) that the Commission "collect
         and publish more specific, quantifiable and standardized data about the applicants' use of
         E-rate funds." *NBP* at 238.

[12]   *See* NPRM, ¶¶ 22-23 ("ConnectED…set a target of at least 100 Mbps service with a
         target of 1 Gbps…within 5 years…[SETDA recommended] schools have 100 Mbps per
         1,000 users increasing to 1 Gbps per 1,000 users.").

[13]   Comments of the Education and Libraries Networks Coalition, WC Docket No. 13-184 at
         18 (Sept. 16, 2013) ("EdLinc Comments").

[14]   "High-Speed Broadband in Every Classroom: The Promise of a Modernized E-Rate
         Program," Cisco at 21 (Sept. 2013) ("Cisco White Paper"). This translates into 1 Gbps
         for 2014 and 4 Gbps for 2018 for a school with 1,000 students.

meeting those needs."[15] NTCA added that "focusing solely on delivering higher speeds that are

unaffordable and unsustainable could result in a waste of limited resources without a clearly

defined benefit or usage case" and proposed that the Commission work with interested parties to

tailor broadband speed goals "to the actual and projected needs of educational anchor

institutions."[16]

ACA appreciates the value of relatively straightforward nationwide bandwidth targets

but, as NCTA and NTCA discussed, these targets should be based on real, demonstrable needs

and in consideration of the potential costs that will be incurred to achieve the objective. It

suggests the Commission adopt this approach in establishing the targets. Once it adopts these

bandwidth targets, the Commission then can examine the supply of broadband infrastructure and

size the challenge it faces in providing universal high-speed broadband connectivity to schools

and libraries.

III.   **THE COMMISSION NEEDS TO DETERMINE THE GAP BETWEEN THE DEMAND FOR AND SUPPLY OF BROADBAND CONNECTIVITY BY SCHOOLS AND LIBRARIES AND THEN DEVELOP A PLAN TO CLOSE IT**

In the NPRM, the Commission cited several sources for the need to provide schools and

libraries with high-capacity broadband connections.[17] These include the Commission's 2010

survey of E-rate funded schools and libraries and a 2011-2012 survey by the ALA – both of

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[15]   *See* Comments of the National Cable & Telecommunications Association, WC Docket No. 13-184 at 8 (Sept. 16, 2013) ("NCTA Comments").

[16]   Comments of NTCA—The Rural Broadband Association, WC Docket No. 13-184 at 18 (Sept. 16, 2013) ("NTCA Comments").

[17]   *See* NPRM, ¶¶ 5-8.

which focus on whether current connection speeds are sufficient.[18] But, none of the sources

cited by the Commission provides indicates with sufficient precision the extent to which the

existing supply of broadband connectivity to schools and libraries is inadequate, and therefore

we lack any sense of the magnitude and nature of the gap between demand and supply that needs

to be addressed if the new broadband connectivity aim is to be achieved.[19] In other words,

assuming agreement on the broadband capabilities schools and libraries require (the demand),

what is the gap between that demand for connectivity and the supply of broadband

infrastructure?

Without this understanding of the nature and scale of the problems in providing

broadband connectivity to students and library patrons, the Commission cannot move forward

rationally. This was the point made by Chairwoman Clyburn two months ago, "We need good

data if we're going to get this right."[20] SECA effectively made a similar point in its comments

when it noted that it is challenging "to quantify the costs associated" with updating the E-rate

program.[21]

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[18]   The *NBP* also stated that "inadequate connectivity speeds and infrastructure issues are
        frequently reported and bandwidth demands are projected to rise dramatically over the
        next few years." *See NBP* at 236. However, support for this conclusion is not based on a
        comprehensive analysis. The *NBP* also does not size the problem.

[19]   Verizon also criticized use of the Commission's 2010 survey of schools' broadband
        connectivity data, noting that it is derived from a small sample of participants and, in any
        event, is out of date given that demand for greater broadband capabilities has increased
        substantially in the past three years. *See* Verizon Comments at 11-12.

[20]   Chairwoman Remarks at 2. The Commission made a similar point in an 2007 order and
        in the *NBP*. (*See Review of the Universal Service Fund Management, Administration,
        and Oversight, et al.*, Report and Order, 22 FCC Rcd 16372, ¶ 39 (2007); *NBP*,
        Recommendation 11.20 at 238.)

[21]   SECA Comments at 14.

Unfortunately, none of the comments provided sufficiently precise, documented evidence of the nature and scale of the gap between where we are and our broadband connectivity aims. Many commenters supporting expansion of the E-rate program cited to previously published data, such as the Commission's 2010 survey or the SEDTA report, which are either flawed or only focus on whether current connections are sufficient.[22] Cisco, in its comments, included from its recent White Paper estimates of specific broadband capabilities that schools and libraries should have,[23] but, as NCTA stated, Cisco "includes no estimate of the cost of implementing those recommendations."[24] EducationSuperHighway at least provided estimates of the cost of reaching the SETDA goals – 2014-2015 goal: $3 billion per year; and 2017 goal: $9.9 billion per year.[25] Unfortunately, it provided no evidence on how it developed these estimates.[26] At least, NTCA, which takes a more measured approach to E-rate reform, found from a recent survey of its members that "in many rural areas…RLECs in the vast majority of cases have sufficient capacity in place to meet today's (and tomorrow's foreseeable) demands."[27] In sum, the Commission does not yet have a basis to determine whether current E-rate funding is

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[22]   NCTA stated that the SETDA report "relied on very high-level analysis of certain use cases, with little explanation of the basis for the specific recommendations and no information on the cost of implementing those recommendations." *See* NCTA Comments at 8.

[23]   *See* Cisco Comments at 15-17.

[24]   NCTA Comments at 8.

[25]   *See* ESH Comments at 5.

[26]   EducationSuperHighway also does not indicate the duration for this increased spending.

[27]   NTCA Comments at 12-13.

sufficient or needs to be increased.[28] It thus needs to undertake a process that, as NTCA set

forth, enables it to,

> classify the problems that exist by identifying whether sufficient robust
> connections already exist, evaluate whether those schools that already have such
> connections are in fact able to make sufficient use of them, and if that is not the
> case, assess what drivers (affordability/price or lack of
> applications/interest/training) hinder those CAI's [Community Anchor
> Institution's] use of higher-speed services across the existing robust broadband-
> capable connections.[29]

The process proposed by NTCA appropriately focuses the Commission's data collection

and analysis on not only availability of infrastructure but affordability as well.[30] With demand

for connectivity almost certain to exceed the amount of E-rate funding available, the

Commission will need to examine how to maximize use of support: which schools and libraries

should receive support and for what purposes. This is somewhat akin to the process the

Commission undertook to distribute Connect America Fund support. In that case, recognizing

that support was limited, the Commission, among other policies, established a cost threshold

below which it would not provide high-cost support for price cap local exchange carriers and

instituted a fund directed specifically to the most high cost areas (the Remote Areas Fund) where

only limited services would be supported.[31] The Commission in the NPRM recognizes the

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[28]   Numerous commenters call for substantial increases in E-rate support. *See e.g.* EdLinc
         Comments at 5, which "urges an increase to at least $5 Billion annually." Most of these
         request are based on the fact that current demand for E-rate support exceeds the $2.25
         billion annual funding limit. As such, they do not address the amount required to solve
         the broadband connectivity problem.

[29]   NTCA Comments at 7. Comcast, in its comments, provided further insight on the fact
         that determining whether any deployment is cost-effective depends on multiple,
         geographic specific factors. *See* Comcast Comments at n. 20.

[30]   *See* NTCA Comments at 8.

[31]   *See USF/ICC Transformation Order/FNPRM*, Section VI., ¶¶ 121-126, 158-159, 533-
         538.

importance of this issue and inquires about it in depth "to ensure equitable access to limited E-rate funds."[32]

From ACA's perspective, the affordability issue involves an examination of the cost to provide broadband on a sustained basis – which areas have the highest costs – and the ability to pay – which areas have less funding. As discussed below, the Commission needs to orient E-rate support so that the greatest amount of support goes to those schools and libraries with the most low-income students/patrons and in the highest cost areas, factors which reflect the current rules,[33] and to those that have the least ability to pay.[34]

Finally, the affordability issue also highlights that some schools and libraries may not need E-rate support because another source, private or public, is providing assistance. For instance, the cable industry, through the Cable in the Classroom program, provides broadband and video programming services to many schools,[35] and states or local governments may provide their own support.[36]

Once the Commission collects sufficient data so that it can determine the gap between its broadband connectivity objectives and the twin problems of availability and affordability, it can

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[32]   NPRM, ¶¶ 115-162. ACA is not suggesting that the Commission needs to or should undertake a comprehensive data collection effort akin to that proposed in the *Special Access Data Collection Order*. *See Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153, ¶ 52, (rel. Dec. 18, 2012) ("*Special Access Data Collection Order"*).

[33]   47 C.F.R. §§ 54.505(b)(1), (b)(2), and (c).

[34]   This, of course, assumes that measures are put in place to protect against waste.

[35]   *See* NCTA Comments at 4. The industry also supports the Connect-to-Compete program, which offers discounted broadband services to eligible low-income families.

[36]   The Alabama Supercomputer Authority, for example, is a state-funded entity that provides networking resources to schools. *See* http://www.asc.edu/aboutasa/faq.shtml.

then develop a plan to remedy them. Verizon, in its comments, provides examples of how this

process might work:

> If the data were to show that remote rural schools are lagging behind in connectivity and the survey of those schools indicates that one challenge is the cost of extending facilities to the school, the Commission could consider providing E-rate support for the up-front construction and installation costs...Similarly, if data were to show that small rural schools were failing to meet the targets because of high per-student ongoing costs, the Commission could consider increasing the discount percentage for such schools.[37]

Thus, while many commenters suggested new and potentially valuable ways for the program to

support broadband – such as a capital fund for new deployments – it is premature for the

Commission to adopt and implement them.[38] ACA submits that the process it proposes herein

can be undertaken and completed relatively expeditiously and will provide a sound basis for

adopting policies.

In the next section, ACA discusses a series of steps the Commission should take as part

of any plan consistent with the need to be cost-effective and fiscally responsible.

IV.   STEPS TO CREATING A COST EFFECTIVE, FISCALLY RESPONSIBLE PROGRAM

The Commission inquired at length in the NPRM about how to maximize the cost-

effectiveness of E-rate funds,[39] and ACA discusses below a series of measures to help achieve

that aim without lifting the cap on E-rate distributions.[40] As ACA and others noted in their

comments, for a variety of reasons, it would not be fiscally responsible to increase the cap at this

time without first implementing other measures to re-orient current spending, streamline the

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[37]   Verizon Comments at 14.

[38]   *See e.g*., ALA Comments at 20 ("ConnectUS" Program); ESH Comments at 9-10 ("Upgrade Investment Fund").

[39]   *See* NPRM, ¶¶ 177-219.

[40]   *See id.,* ¶¶ 173-175, in which the Commission raises the issue of whether to lift the cap.

application process, or otherwise make the process more efficient.[41] First, because the Congress

in enacting the USF statute effectively delegated' "taxing" authority to the Commission,[42] it has

a special obligation to exercise it responsibly. After permitting the contribution rate to increase

substantially, the Commission has demonstrated that it understands this charge, and it has shown

in establishing the Connect America Fund[43] that it can achieve worthy universal service goals

without imposing additional costs on consumers. Second, the NPRM correctly set forth

numerous ways that the program can re-orient and streamline current E-rate distributions.[44]

Finally, any decision to increase the E-rate cap should be made in conjunction with funding for

other Universal Service Fund ("USF") programs since increasing distributions by one may

effectively result in decreasing or otherwise limiting distributions for another. Consequently, the

Commission should make the fund more cost effective before even considering increasing the

cap, and the following sections provide a series of policies the Commission can adopt towards

this end.

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[41]   *See* ACA Comments at 4 ("While the Commission has proposed in the NPRM admirable
         objectives to propel digital learning, these need to be tempered by fiscal realities,
         especially the current very high universal service contribution rate. In this regard, the
         Commission has a good track record. The Commission has a cap in place on E-rate
         expenditures. In addition, in establishing the Connect America Fund, the Commission
         made fiscal responsibility a prime objective, increasing efforts to expand broadband
         deployment within a fixed budget based on previous high-cost fund expenditures.   It
         should adhere to these precedents in this proceeding, seeking to provide additional
         support for high-speed broadband connectivity by re-orienting the fund to reduce support
         for some legacy services, such as paging and voice-related services, and by increasing
         program efficiencies, and not by increasing the total size of the fund.); NCTA Comments
         at 9-10.

[42]   *See* 47 U.S.C. § 254.

[43]   *See USF/ICC Transformation Order/FNPRM*, Section VII.B., ¶¶ 121-126.

[44]   *See e.g.* NPRM, ¶¶ 177-219.

A. The Commission Should Require Schools and Libraries to Use Existing Facilities to the Maximum Extent

In the *Sixth Report and Order*, the Commission, after an intense debate between applicants and service providers, decided to include dark fiber on the ESL and permit eligible schools and libraries to receive support as a priority one service.[45] In the NPRM, the Commission inquired about potentially permitting schools and libraries to obtain additional support for and expand use of dark fiber – which effectively would support their deployment of private networks.[46] For ACA members, which deploy extensive networks using primarily private capital and sometimes support from other USF programs, this is a critical issue. Put simply, any effort to enable government supported overbuilding not only undermines previous investment, but it deters future investment as well – contrary to the Commission's goal of seeking to expand broadband deployment. The Commission, in the *USF/ICC Transformation Order/FNPRM*, recognized this reality and adopted as a basic principle of reform that Connect America Fund support would not be provided where broadband service already existed.[47] ACA submits the Commission must act consistent with that position in this proceeding, and in its initial comments, ACA, after discussing at length the efficiencies that could be gained by requiring schools and libraries to use existing infrastructure to the maximum practical extent, proposed that the Commission establish a certification process where applicants would demonstrate they conducted sufficient due diligence to acquire these facilities before they could

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[45] *See Schools and Libraries Universal Service Support Mechanism et al.,* CC Docket 02-16 et al., Sixth Report and Order, FCC 10-175, ¶ 9 (rel. Sept. 28, 2010).

[46] *See* NPRM, ¶¶ 67-82.

[47] *See USF/ICC Transformation Order/FNPRM*, ¶ 20.

construct their own.[48] ACA's position was supported by a wide-range of service providers,

including:

> NCTA – "The Commission should authorize E-rate funding for fiber provisioning by
> schools and libraries only where they demonstrate that: (1) there are no commercial
> alternatives; (2) there are no more cost effective methods to receive high-speed
> broadband; and (3) they have the expertise to handle the operational burden of operating
> and maintaining a fiber network."[49]
>
> NTCA – "It is critical that the use of E-Rate funds for… [the construction of networks
> dedicated to schools/libraries] come about and be approved only after a thorough review
> process. Such an analysis is necessary to prevent deployment of redundant networks in

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[48] *See* ACA Comments at 8:

- Existing providers have constructed – and continue to build vast amounts of last
  mile and "metro" and other transport infrastructure supporting the provision of
  high-speed services, including the provision of these services to schools and
  libraries.

- Existing providers have experience and demonstrated expertise in operating
  broadband networks and provisioning services over shared plant to users requiring
  a high degree of quality and reliability.

- Existing facilities take advantage of important economies of scale which are key
  to efficient deployment and operation.

ACA further argued in its comments that, while it would be possible for students to be
able to have wireless access off-campus using facilities of service providers, in no
instance should schools (or libraries) be able to own/construct community wireless
hotspots. *See* ACA Comments at n. 9. ACA submits that such deployments, which are
almost certain to be limited, cannot be as cost-effective as larger, more intensely used
deployments and that this would be particularly the case if a prohibition on resale of such
service were imposed, as it should be. ACA's position was widely supported by service
providers. *See e.g.*, Comments of CenturyLink, WC Docket No. 13-184, at 33 (Sept. 16,
2013) ("CenturyLink Comments") ("The Commission should not allow use of E-rate
funding, directly or indirectly, for wireless community hot spots…The Commission lacks
authority to extend E-rate support for broader community use without a sufficient nexus
to educational purposes."); Comments of the United States Telecom Association, WC
Docket No. 13-184, at 9-10 (Sept. 16, 2013) ("By adopting such a rule, the Commission
would effectively syphon off the already limited public funds dedicated to E-Rate
Program services for non-E-Rate purposes.").

[49] NCTA Comments at 12.

areas where access a to a privately-constructed high-capacity broadband network is already available."[50]

AT&T – "There is no sound policy reason to utilize government money to build additional, and especially private, networks in areas where high-speed broadband is already being provided commercially."[51]

CenturyLink – "Service providers, operating in a competitive market, are consistently more efficient and provide greater cost effectiveness [than schools and libraries operating their own network]."[52]

ACA recognizes that commenters representing schools and libraries support expansion of their ability to own/construct and operate dark fiber and other network facilities,[53] and it recognizes that in limited instances this may be the most cost-effective solution.[54] ACA's proposal accounts for this fact, permitting a school or library to engage in these activities where more cost-effective facilities do not exist. However, because E-rate funding is limited and government supported overbuilding is antithetical to broadband development, the Commission should not permit schools and libraries to own/construct and operate their own facilities without robust safeguards.

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[50]   NTCA Comments at 16. NTCA (at 17) adds a series of safeguards, including a public challenge process and "meaningful" matching funds.

[51]   AT&T Comments at 6.

[52]   CenturyLink Comments at 6. *See also* Comments of Cox Communications, Inc., WC Docket No. 13-184, at 6 (Sept. 16, 2013) ("Cox Comments") ("the costs and challenges of light dark fiber or constructing new fiber networks are not always apparent to E-rate applicants at the outset…the Commission could require schools and libraries that propose either to build new fiber networks or to purchase dark fiber to confirm that this is the most cost-effective approach."); Comments to Notice of Proposed Rulemaking of LTS Buyer LLC, Unite Private Networks, LLC, and Fibertech Networks, LLC, WC Docket No. 13-184, at 8 (Sept. 16, 2013) ("LTS Buyer Comments") ("Although WANs are necessities for providing bandwidth to schools districts, schools and libraries do not have the expertise or resources necessary to address issues associated with engineering, installing and maintaining or owning their own WANs.").

[53]   *See e.g.*, ALA Comments at 13

[54]   In determining whether procurement of facilities is cost effective, ACA agrees with Comcast that "total cost analysis is…essential." *See* Comcast Comments at 40.

B.   The Commission Can Increase Competitive Bids by Creating a Simple, More Responsive Application Process and Otherwise Facilitating Service Provider Participation

The Commission submits that one key to ensuring schools and libraries pay reasonable prices for E-rate services is to maximize the number of service providers bidding.[55] ACA concurs, and, from the perspective of its smaller members, their failure to participate is due to a significant extent to the fact that the current process is so complex and onerous. ACA thus suggested in its comments, as one measure to address this problem, that because the terms and conditions for broadband connectivity service are relatively well-known, the Commission should develop a template Form 470, which can be used by applicants to procure services.[56]

Other commenters also urged the Commission to simplify or otherwise improve the procurement process to encourage participation both by schools and libraries and by service providers.[57] Of particular note were the comments of Comcast, which proposed the Commission adopt processes "to promote a collaborative dialogue among all affected stakeholders."[58]

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[55]   *See* NPRM, ¶ 202. *See also Sixth Report and Order*, ¶ 11 ("broadening the scope of potential suppliers of broadband increases competitive options"). Given the goal to encourage service provider participation, ACA finds it somewhat incongruous that the Commission, in the NPRM (¶ 159), inquires about "eliminating all or portions of our bidding rules." These rules, because they provide for greater transparency and objectivity, have acted to encourage participation by service providers. ACA also stated in its initial comments that "while applicants should comply with state and local [procurement] requirements, it is essential the FCC establish and enforce requirements for a fair and open competitive bidding process." *See* ACA Comments at 16. *See also* LTS Buyer Comments at 12 ("Removing competitive bidding would hinder the school's ability to obtain [the] most cost-effective solution, would harm smaller competitive carriers, and would provide an unfair advantage to incumbent carriers.").

[56]   *See* ACA Comments at 15.

[57]   *See e.g.*, Cisco Comments at 18 ("the Commission's proposals to streamline the application process are a good start" and supported "focusing the…[ESL] on services that schools need to implement a connected digital learning environment.").

[58]   Comcast Comments at 28.

Comcast suggested that the program (1) assist applicants in determining their service requirements (*e.g.* transmission capacity) and possible network configuration by providing them with a "digital template," (2) then enable them to prepare an RFI to solicit specific information from service providers and equipment vendors, and (3) provide guides and samples to assist in issuing an RFP.[59]

ACA believes the Commission should adopt a transparent process similar to that proposed by Comcast. First, applicants should initially notify service providers, equipment vendors and other interested entities of their intent to upgrade their telecommunications and broadband capabilities and seek their input on how to do so most efficiently (an RFI process). Then, using this input, applicants should then issue a tailored RFP, which will engender the greatest response and result in the most efficient build. ACA also believes it is important that during the RFI and RFP process, applicants (including any consultant they may use) need to be responsive to all inquiries from service providers and others who wish to provide input.

Further, as part of a simplified application process, the Commission should permit service providers to offer all services on the ESL regardless of their regulatory classification and simplify the ESL so services are defined regardless of regulatory classification.[60] These proposals were supported by many stakeholders from the ALA to NCTA.[61] The Quilt, for example, stated that "competition from non-telecommunications providers has created

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[59]   *See id.* at 28-29.

[60]   *See* ACA Comments at 14.

[61]   *See e.g.*, ALA Comments at 29 ("remove the regulatory classifications…and allow applicants to request E-rate eligible services from any entity"); NCTA Comments at 16 ("remove the regulatory classifications" on the ESL).

marketplace pressure on traditional telecommunications service providers to offer affordable

Ethernet service solutions."[62]

Lastly, the Universal Service Administrative Company ("USAC"), which already

provides training and outreach to applicants and service providers for the E-rate program, should

seek to enhance these educational efforts, particularly by reaching providers that have never

participated in the program and are capable of providing the eligible services used by schools

and libraries. Moreover, this outreach should be directed especially to providers operating in

smaller markets and rural areas since they are often unable to incur the significant cost to attend

events in distant metropolitan areas. USAC can either undertake this task on its own or work

with groups and associations affiliated with service providers.[63]

C.   The Commission Should Phase Out Non-Broadband Related Services from the Eligible Services List

ACA proposed in its comments that the Commission should prune the ESL by phasing

out support for services that are only used for voice communications, which would free-up more

than $400 million annually to be used for broadband connectivity.[64] Numerous other

commenters from across the spectrum of interested parties agreed. Comcast, for example, stated

that the ESL should "include only those services that can be used to provide students with access

to high-capacity broadband networks and should no longer subsidize services that are not

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[62]   *See* Comments of The Quilt, WC Docket No. 13-184 at 8 (Sept. 16, 2013).

[63]   ACA also generally supports the Commission's efforts to improve the invoicing and disbursement process, which can be unduly burdensome for smaller providers. *See* NPRM, ¶¶ 259-265.

[64]   *See* ACA Comments at 11-12. ACA also recommended eliminating support for a variety of other "dated" services, but eliminating these would not free-up significant amounts for broadband support.

provided over broadband platforms,"[65] and AT&T proposed "that the Commission begin to limit and eventually eliminate funding for all circuit-switched and TDM-based services."[66] SETDA, SECA, ALA, and ESH all generally supported having the program focus on broadband connectivity and infrastructure.[67]

ACA recognizes that other commenters, such as Cox Communications, cautioned "against elimination or a sharp reduction in all voice services…[because] reductions in support would create hardship."[68] ACA does not necessarily disagree with Cox and others that loss of support for voice services may inflict some hardship, but the purpose of this proceeding is to establish broadband connectivity as the major priority for the program.[69] Hence, where funds are limited, support should be focused on the program's most important priorities. ACA thus urges the Commission to adopt a reasonable but relatively expeditious transition from providing support for these non-broadband related services, with one exception – in rural areas, because the

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[65]   Comcast Comments at 24.

[66]   AT&T Comments at 10. AT&T adds in Attachment 1 a list of 21 services "that should be considered for a change in funding priority."

[67]   *See* SETDA Comments at 19 ("Presuming that the education needs being served by these legacy services can be met via broadband-enabled services eligible under the modernized E-rate, SETDA believes that a rational, predictable phase out would increase resources available to meet the growing broadband needs of all schools and should be pursued."); SECA Comments at 12-13 ("supports prioritizing broadband services and equipment for E-rate funding."); ALA Comments at 15 ("endorses the principle that reforming the E-rate program will provide incentives to deploy and use high-capacity broadband networks…as long as the transition is managed smoothly over at least a five-year process); and ESH Comments at ii ("focus the E-rate program on broadband connectivity and infrastructure").

[68]   Cox Comments at 10. *See also* CenturyLink Comments at iii ("It should not discontinue E-rate support for voice services, nor limit support to voice that is bundled with broadband services.").

[69]   Supporting broadband connectivity also has the advantage of enabling voice service to be provided more efficiently as IP. *See* Cisco White Paper at 33 ("Not only can this [IP voice] save the school operating expenses, it also allows the schools to use the new functionality, such as instant messaging, visual voicemail, mobility, and video.").

cost of service may be sufficiently great, the transition should be more gradual, and waivers

should be permitted in instances where costs are exceptionally high.

D. The Commission Should Increase Matching Funds Requirements, Particularly in Non-Rural Areas

To increase the cost-effectiveness of E-rate support and more equitably distribute it, the

Commission proposed in the NPRM to gradually increase "the minimum matching funds

provided by applicants."[70] The Commission argued that this would increase the incentives of

those schools and libraries that receive higher discounts to drive down the cost of purchasing

services, and it estimated that "if all discount rates were five percent lower in 2011," there would

be an additional $169 million to distribute.[71] Many commenters – for instance, SEDTA and

Verizon – supported increasing the matching amount as a way to "discourage inefficient

spending"[72] and "better target scarce federal dollars,"[73] respectively. ACA agrees. The greater

the financial stake schools and libraries have in purchasing decisions, the greater their incentives

to procure services more efficiently. At the same time, because, as ALA notes, "the urban/rural

broadband discrepancy has grown dramatically wider," ACA agrees with ALA that "rural

applicants receive an additional…discount."[74]

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[70]   NPRM, ¶ 118.

[71]   *Id.*, ¶ 124. *See also id.*, ¶ 121, where the Commissions discusses its decision in the *Healthcare Connect Fund Order* "to require recipients to contribute 35 percent of costs of the supported services."

[72]   Verizon Comments at 15. *See also e.g.*, CenturyLink Comments at 13 ("higher match policy is likely appropriate.").

[73]   SETDA Comments at 20.

[74]   ALA Comments at 17-18.

IV.   CONCLUSION

In these comments, ACA has sought to provide the Commission with a path to create E-rate 2.0, the first steps of which are to determine a precise and compelling mission for the program and the nature and scope of the problems faced in achieving this goal. By establishing this solid foundation for reform, the Commission can ensure it maximizes the benefits for schools and libraries as well as the value of limited USF funding. The Commission can then turn to adopting specific measures to expend this limited funding most cost-effectively. ACA looks forward to working with the Commission as it proceeds down this road.

Respectfully submitted,

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